

17 September 1976

OLC: 76-2630

MEMORANDUM FOR: E. Henry Knoche
Deputy Director of Central Intelligence

THROUGH: Jack Blake
Deputy Director for Administration

FROM: George L. Cary
Legislative Counsel

SUBJECT: Draft Executive Order "Suitability Requirements
for Government Employment"

1. The attached materials have been prepared in response to a request from the General Counsel at OMB for the DCI's comments on a draft Executive Order.

2. The proposed Order, "Suitability Requirements for Government Employment", would relax the standards under which employees and applicants are investigated, and would restrict the types and degree of information into which the investigators could delve. The procedures and standards in this proposed Order are not acceptable as far as protecting foreign intelligence information is concerned. This points out a fundamental problem with the draft Order -- it does not make clear that the DCI has the responsibility for protecting intelligence information, including the authority to establish standards for access thereto. Furthermore, and also of serious concern, are provisions of the draft Order that would grant Federal employees and applicants certain due process rights regarding notification, adverse actions, and adjudication procedures; these provisions arguably weaken the Director's termination authority under Section 102(c) of the National Security Act of 1947.

3. The attached letter and changes to the draft Executive Order establish our strong opposition. This material, prepared in conjunction with and concurred in by the Intelligence Community Staff, the Office of Security, the Office of Personnel and Office of General Counsel, substantially revises the draft Order in order to bring it in line with the Director's responsibilities and authorities. I am advised by the Office of Security that even if all the changes are made, we could not escape having to give rejected applicants more information than under present procedures.

4. Neither the Agency nor the Intelligence Community Staff was consulted in the drafting of this Order, and, as far as can be determined, the NSC has not yet been brought into the picture. The Order apparently is being pushed strongly by OMB, the Privacy Committee of the Domestic Council, and DOD (which favors the lowered standards, among other things, for the manpower and monetary savings involved). Our signals indicate OMB wants very much to have the Order ready before Election Day. We apparently will have to fight OMB in attempting to quash the Order or to alter it adequately. Time is of the essence in getting this package to OMB; the General Counsel's Office at OMB was somewhat hesitant to extending their 15 September deadline by a few days.

5. It is the recommendation of those who have worked on this complicated Order that you or the Director contact Brent Scowcroft, either by telephone or by forwarding a copy of this package to him, as soon as possible to apprise him of the serious problems we have with this draft Order, in an effort to enlist his support in making sure that our concerns will be represented adequately in this matter. The attached letter to OMB Director James T. Lynn is to be signed by the Director.



/s/ George L. Cary
Legislative Counsel


STATINTL

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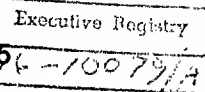
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CENTRAL INTELLIGENCE AGENCY

Approved For Release 2002/11/22 : CIA-RDP79-00498A000200110039-5



OLC 76-2256/a

Honorable James T. Lynn, Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to the letter of 6 August 1976, from your General Counsel, requesting my comments on the proposed Executive Order entitled "Suitability Requirements for Government Employment." A careful review of the draft Order has led me to conclude that its standards and procedures do not afford adequate protection to the Government's sensitive foreign intelligence information or activities.

In light of my statutory and executive responsibilities to protect intelligence sources and methods and analytical procedures, it is of deep concern to me that only those persons of the highest degree of loyalty and trustworthiness are granted access to foreign intelligence data requiring protection. The minimum personnel security standards and procedures governing access to Sensitive Compartmented Information are contained in Director of Central Intelligence Directive No. 1/14, which was issued pursuant to Executive Order 11905, Section 102 of the National Security Act of 1947, and National Security Council Directives. DCID No. 1/14 applies to all Government personnel and private individuals requiring access to such information.

Although the summary and analysis submitted with the proposed Executive Order refers to certain exemptions for the the Central Intelligence Agency and the National Security Agency where the Order may be in conflict with the authorities noted above, the Order itself does not reflect the responsibility of the Director of Central Intelligence for establishing and monitoring access to and protection of foreign intelligence information. Since it is imperative that any Executive Branch action along the lines of the proposed Order must not conflict with such other statutes and Orders as relate to foreign intelligence information, I am enclosing a copy of the Order with changes necessary to bring it in line with existing standards and procedures for providing access to sensitive foreign intelligence information, as well as an explanation of the major changes.



As can be seen from a reading of the proposed amendments, my concerns center around two general propositions. In the first place, the proposed Executive Order would establish standards for access to foreign intelligence information which I find unacceptable in light of my statutory and executive authorities. The implementation of the standards and procedures in this Order would lead to situations in which I could not accept certification of clearances on individuals granted under the relaxed standards of the proposed Order. Secondly, I am concerned that the provisions of this proposed Order that relate to purported rights of employees or applicants conflict with my termination authority under Section 102(c) of the National Security Act of 1947, as amended. This authority vested in the Director of Central Intelligence reflects the necessity that he retain flexibility and discretion in protecting sensitive intelligence information and those positions involving access thereto.

It is my strong belief that further consideration should be afforded to the timeliness and scope of the proposed Executive Order, and that the concerns registered in this letter and explained more fully in the enclosures be included in such deliberations. It is recognized that our changes involve significant alterations to the proposed Executive Order. This, however, reflects the fact that representatives of the Central Intelligence Agency and the Intelligence Community Staff were not consulted in drafting deliberations.

Sincerely,

George Bush
Director

Enclosures

Distribution:

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OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

GENERAL COUNSEL

August 6, 1976

Honorable George Bush
Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Bush:

Herewith, in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Executive order entitled "Suitability Requirements for Government Employment."

This proposed order, along with the enclosed summary and analysis, was submitted by the Domestic Council Committee on the Right of Privacy.

The draft order rests on two premises. First, for the vast majority of Federal positions, the Executive Branch does not need, and therefore should not collect, extensive background and other kinds of personal information. It indicates that the government's interest in what the order calls "general standard positions" is to assure that it hires and retains competent employees. In these positions the chance that employees will deliberately or inadvertently pose a significant danger to a national interest are so marginal that privacy and cost concerns demand that the government collect only enough personal information to make appropriate personnel and competency judgments. The proposed order establishes strict limits on investigative scope and methods and includes important new rights of privacy, notice and due process.


In its second premise, the proposed order reflects the belief that a select number of Federal positions involve activities that are extraordinarily sensitive and critical to the Nation's welfare. For these positions the public runs a significant risk that incumbents can deliberately

or inadvertently do substantial damage to critical national interests. In what the order calls "positions of special trust" the government not only has an interest in its employees' competence, but also in a complete range of personal attributes, including emotional and intellectual stability, trustworthiness and unswerving allegiance to the Nation. This proposed order strengthens Executive Branch capability to collect and use detailed personal information to make employment, retention and promotion decisions about individuals who fill these critical positions.

The proposed Executive order is intended to improve the ability of the Civil Service Commission in collaboration with OMB and the National Security Council to oversee operation of the system and hold participants accountable for abuses. The order establishes procedures to discourage investigations that are untimely, duplicative or mere formalities. In combination with changes in substantive standards, the system management provisions in this order should work to reduce the number of full field investigations, and ensure agency compliance with security, privacy and due process safeguards.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving your comments concerning this proposed Executive order. Comments or inquiries may be submitted by telephone to Mr. Ronald A. Kienlen (395-5600; IDS 103-5600). I will assume that you have no objection to the issuance of this proposed order if your comments have not been received by Wednesday, September 15, 1976.

Sincerely,


William M. Nichols
General Counsel

Enclosures